

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO REQUEST FOR INFORMATION CONCERNING
COMMERCIAL MOTOR VEHICLE DRIVER DETENTION TIMES
DURING LOADING AND UNLOADING
DOCKET NO. FMCSA-2019-0054

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INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the June 10, 2019 Request for Information published by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) at 84 Fed. Reg. 26932 (“Request”), seeking information on sources of data that might help the Agency better understand driver detention times during the loading and unloading of commercial motor vehicles, as well as the potential impact of such delays on roadway safety. In the Request, FMCSA sets out seven specific questions pertaining to various aspects of detention.

NMFTA is a nonprofit membership organization, with a membership comprised of approximately 500 motor carriers operating in interstate, intrastate and foreign commerce, carriers that specialize in the movement of less-than-truckload quantities of freight (“LTL”). NMFTA’s mission is to promote, advance, and improve the welfare and interests of these members and the motor carrier industry in general. To this end, and pertinent here, NMFTA presents its members’ position in relevant judicial, regulatory, and legislative proceedings. Because NMFTA’s member carriers in their day-to-day operations regularly experience the types of extended loading and unloading delays resulting in detention that are addressed by FMCSA in this proceeding, the Association is providing the following comments.

DISCUSSION

- I. Data and technology capable of collecting detention information exists, but usage and collection is not uniform throughout the industry.

In an effort to gather information demonstrating the magnitude of extended delays experienced by drivers, FMCSA has asked commenters to address whether data and technology currently exist that accurately record loading, unloading, and delay time, and how delay times may be captured in a systematic, comparable manner. *See* 84 Fed. Reg. at 26933, questions 1-3.

Based upon informal reports from several NMFTA member carriers, they do seem to generally believe that systematic collection of loading, unloading, and delay times for individual shippers and receivers would be helpful to them in making pricing decisions. *See* 84 Fed. Reg. at 26933, question 4. Moreover, it is our understanding that some of NMFTA's member carriers collect detailed data on detention in order to be able to bill for such services when drivers have been delayed for more than the allowable free time. But it is equally apparent that there is no single currently existing database or technology used by LTL motor carriers to capture and record such information. Further, to the extent that such data is collected, it is not done in a uniform manner that could provide FMCSA with a database containing systematic, comparable data, even in this LTL segment of the industry.

Detention data may be compiled from various written documentation provided by drivers, such as notations on bills of lading or delivery receipts, among others. It may also be gleaned from information that is input by drivers into a variety of hand-held or in-cab devices supplied by or required by carriers. Finally, some (but not all) on-board recorders or electronic logging devices may be capable of capturing such information. Yet, there is no single manual or technological method for accurately recording and collecting detention data.

II. The LTL segment of the motor carrier is unique and therefore must be treated separately with respect to detention.

FMCSA next asks what FMCSA should use as an estimate of reasonable loading and unloading time. *See* 84 Fed. Reg. at 26933, question 5. As discussed below, there is no fixed period of time that is reasonable for all motor carriers. Nor is there, in the LTL segment of the motor carrier industry, any fixed period of time that can be applied by a single carrier in all circumstances. The reasons for this are discussed below.

As FMCSA recognized in its Request, detention is a frequently studied issue. *See* 84 Fed. Reg. at 26932-26933. FMCSA itself sponsored detention-related studies in 2001, 2007, and 2013. GAO too addressed the issue in a 2011 Report. More recently, DOT’s Inspector General studied the problem and issued a report in 2018 that provided the impetus for the current information Request. *See Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis*, Audit Report ST2018019 (Jan. 31, 2018), at www.oig.dot.gov/library-item/36237. Important for present purposes, when these studies and reports address reasonable free time for loading or unloading and the onset of detention, they most often assume that two hours is a reasonable guideline. Indeed, FMCSA itself references the “commonly accepted two-hour loading and unloading period” in its Request. *See* 84 Fed. Reg. at 26933.

While two hours may be reasonable for loading and unloading when truckload freight is involved (i.e., a full truck carrying products to or from one shipper/consignee), it is not a reasonable time when LTL operations are involved. LTL carriers are motor carriers that most commonly handle commercial freight shipments ranging in weight from about 150 pounds to 10,000 pounds, although some shipments may weigh up to 20,000 pounds. The commodities shipped include almost any item that falls within this weight range. A review of the National Motor Freight Classification (“NMFC”), a publication that classifies the thousands of distinct commodities moving in interstate, intrastate and foreign commerce based upon their transportability, amply illustrates the vast variety of commodities moved by LTL carriers.

These commodities moved not only vary substantially in weight, but also vary in their density (weight per cubic foot), ease of handling, stowability, and liability. *See* NMFC Procedures (eff. July 8, 2019), Rule 7, ¶ (a)5, and Appendix, Policies and Directives Pertaining

to the NMFC, ¶ I.A, at www.nmfta.org/documents/CCSB/CCSB%20Procedures.pdf. Each of these factors can affect the time it should reasonably take to load or unload a particular cargo shipment. For example, cargo that is tendered loose, either in cartons, other packaging, or without external packaging, is more difficult to handle and will therefore take longer to load or unload than cargo tendered on skids or pallets that can be handled with forklifts or pallet jacks. Similarly, odd-shaped, oversized, fragile, or hazardous cargo may require special handling which could result in longer loading or unloading times than more standard cargo. Such additional handling requirements compound delays caused by external factors such as dock congestion, manpower shortages, equipment availability, and lack of paperwork or cargo readiness at loading docks.

Additionally, when relatively small amounts of freight are involved in each shipment, as is typical in LTL operations, it would be highly inefficient and costly to send a separate truck and driver to pick up each individual shipment. Consequently, to make the process workable, on any given day an LTL carrier dispatches local pickup drivers to pick up and consolidate freight offered by multiple shippers into one truck, then bring it back to the closest local terminal or regional hub. These drivers often follow regular routes, often making numerous stops at regular customers' facilities, although drivers sometimes also pick up shipments of cargo being tendered by other shippers on a more sporadic or occasional basis.

Using a "hub and spoke" type of system, the local cargo is then sorted by destination, and freight heading in the same direction is consolidated for linehaul delivery by another truck and driver to another terminal. Freight will often be sorted and consolidated at other hubs/terminals for additional linehaul transportation several times before the local terminal closest to the final

destination is reached. At that point, local delivery drivers, also with multiple-stop routes, will deliver the freight to the various consignees.

This operational model, involving many pickups and/or deliveries in a single day, imposes unique time constraints upon local LTL drivers attempting to complete their designated routes in a timely fashion. A two-hour delay at even one stop could prevent completion of a driver's route. Even much shorter delays, if they occur repeatedly over the course of a single day, could add up to enough delay that a route cannot be completed during the customers' normal business hours. Extensive delays might also bring drivers into conflict with time limitations imposed by HOS rules.

Because of the nature of their operations, most LTL carriers allow free time for loading/unloading that varies between 15 and 60 minutes. The variations primarily correlate with the weight of the shipment.¹ While 10 or 15 minutes may be all the time that is reasonably needed to load or unload a shipment under 1,000 pounds, especially if it is on skids or palletized, a shipment weighing more than 10,000 pounds, especially if it is in loose cartons or pieces, might reasonably require a full 60 minutes for loading or unloading. Likewise, multiple shipments going to a single consignee would require more time than otherwise, as would cargo that requires extra labor because it is fragile, oddly-shaped, oversized, or has other characteristics making loading or unloading more difficult.

In sum, two hours would appear to be too long for loading or unloading most LTL shipments. Moreover, there is no single shorter amount of time that can be uniformly be used as an estimate of reasonable loading and unloading time in the LTL segment of the industry. Thus,

¹ The weight breaks used by LTL carriers, which reflect the free time allowed for loading and unloading, may often be found in their publically-available rules tariffs.

any detention rules ultimately adopted by FMCSA must recognize the uniqueness of LTL operations, and allow LTL carriers, as many do now, to establish sliding free time scales that reflect the substantial variations in weight and transportation characteristics of the freight being handled.

III. FMCSA needs to clarify what type of delays qualify as detention.

In the Request, FMCSA defines detention as “delays in the start of the loading and unloading process which disrupt the driver’s available driving and/or on duty time”. *See* 84 Fed. Reg. at 26933. While this definition might seem self-explanatory, it has been interpreted in a manner by the Department of Defense (“DOD”) that does not account for all delays incurred by carriers attempting either to pickup or deliver a load to military installations or buildings.

Specifically, it is regular procedure for DOD to apply to LTL loads detention rules which establish free times ranging from 1 to 3 hours even though such timeframes are not feasible for these carriers. *See* Military Freight Traffic Unified Rules Publication-1 (“MFTURP-1”), Item 21 (Detention: Vehicles with Power Units (DEP)), ¶ 1. Moreover, that extended free time does not even start to run until:

The TSP [transportation service provider] has notified the consignor [shipper] or consignee that the trailer is positioned for loading or unloading. A trailer is considered positioned for loading or unloading when placed in a location so it can be immediately accessed for loading or unloading within the consignor’s/consignee’s normal operating hours or acceptance hours as annotated on the BL.

MFTURP-1, Item 21, ¶ 2. Thus, the extended free time for determining when detention charges may be imposed does not even begin to run until the truck has arrived at the actual point of cargo pickup or delivery.

Certainly delays sometimes occur once a truck arrives at a loading dock or facility for pickup or delivery. However, it is the cumbersome security protocol imposed upon drivers and

trucks before they enter most DOD facilities that routinely results in the most significant pickup or delivery delays experienced by motor carriers. It is not uncommon for it to take hours for a driver and truck to clear security at a military installation before being allowed to drive to the pickup or delivery point, even when the driver has an appropriate form of identification that should allow for easy entry. Consequently, all free time normally allotted by an LTL carrier for a single shipment may be gone before the driver even gets through security to head for the pickup or delivery point.

These extended delays prior to the start of the loading and unloading process are entirely within the control of the DOD shipper or consignee, not the driver or carrier, and they clearly disrupt the driver's available driving and/or on duty time. Security is not a supply chain delay that should be the responsibility of the carrier, especially an LTL carrier moving relatively small shipments of cargo, to absorb. To the contrary, the FMCSA should exercise its authority (84 Fed. Reg. at 26933, question 7) to formally adopt the detention definition used in the Request and make it clear that carriers are allowed to include these extended security delays in calculating free time and the onset of detention.

Respectfully submitted,



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